

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Case No: 1:20-CR-183

Plaintiff,

Honorable Robert Jonker

v.

BRANDON CASERTA,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF
BRANDON CASERTA'S MOTION IN LIMINE TO EXCLUDE
STATEMENTS AS IRRELEVANT AND UNFAIRLY PREJUDICIAL**

Defendant Brandon Caserta is charged in the Superseding Indictment in Count 1 (Kidnapping Conspiracy) “the object of the conspiracy was to unlawfully seize, confine, kidnap, abduct and carry away, and hold for ransom and reward, or otherwise, the Governor of the State of Michigan (“the Governor”)” contrary to Title 18, United States Code, Section 1201(a).

The Superseding Indictment alleges that Brandon Caserta had been a member of the “Wolverine Watchmen,” which is alleged to be a Michigan-based militia group with anti-government views. The Superseding Indictment alleges that several members of the “Wolverine Watchmen” were associated with several members of the “Three Percenter” group, which is alleged to be a similar anti-government group.

In general, these groups believed that Federal and State government had engaged in actions that were overreaching and unconstitutional. They believed all persons should be treated equally, regardless of their gender, race, or sexual orientation or identification. They supported the preservation of individual liberties as defined in the United States

Constitution and the Bill of Rights, including the 2nd Amendment right to bear arms. In addition, Brandon Caserta believed the stability of local and federal governments were eroding and civil unrest was tearing at the fabric of our country and being prepared for this unrest and governmental breakdown was essential.

Count 1 of the Superseding Indictment describes a series of alleged “overt acts” spanning from June 6, 2020 until October 7, 2020. The first reference to Brandon Caserta is in Paragraph 4 and alleges on or about July 10-12, 2020 Brandon Caserta traveled to Wisconsin with several other individuals who participated in “field training exercises.” The next reference to Brandon Caserta is Paragraph 7 describing Brandon Caserta’s participation in an August 23, 2020 meeting during which group members examined each other’s identification to determine if any group member was actually an undercover law enforcement officer. Brandon Caserta is referenced in Paragraph 11 as having attended field training exercises on September 12-13, 2020 near Luther, Michigan. In Paragraph 16 it is alleged that on September 17, 2020, Brandon Caserta had been a recipient of a group text message and agreed not to attend an upcoming public rally in order to maintain a low profile. The final reference in the Superseding Indictment to Brandon Caserta is Paragraph 18 and references a video message Brandon Caserta had sent on October 7, 2020 expressing his frustration with law enforcement and the government generally. This is the subject of this motion.¹ Below is a transcription of the video statement the government seeks to introduce which reads as follows:

¹ Brandon Caserta has authored many videos that have been disclosed to Counsel. Counsel asked A.U.S.A. Austin Hakes what videos, if any, were intended to be used and this video is the only video identified at this point. Should the government attempt to admit other videos authored by Brandon Caserta they will be met with like objection as they are even more remote in content and time.

And I'm telling you what, right now, man. I'm going to make this shit 100% clear, dude. If this shit goes down, okay? If this whole thing, you know, starts to happen, I'm telling you what, dude, I'm taken out as many of those motherfuckers as I can. Every single one, dude, every single one. And if you guys are going to give any of these motherfuckers a chance, any of these gang fucking criminal ass government thugs that rob people every day, if you're even going to give them a second to try to speak or tell their story, don't even fuck with me, dude. Don't even fuck with me.

I have zero patience for immoral coward criminals. Okay? And guess what? I'm sick of being robbed and enslaved by the state, period. I'm sick of it. And these are the guys who are actually doing it. You know? So if if, you know, if if we're doing a recon or something and we come up on some of them, dude, you better not give them a chance. You either tell them to go right now, or else they're going to die. Period. That's what it's going to be, dude, because they are the fucking enemy, period.

The Superseding Indictment indicates this video was found on an encrypted chat.

This video message was part of the government's discovery and was posted on Facebook at <https://www.facebook.com//brandon.caserta.144/videos/354298322358201/>, not on an encrypted chat which is a separate platform. This video was posted on Facebook on 10/7/20 at 12:51 am. However, this is not a stand-alone video. There were two other videos within the hour that provide context to this video establishing that it has nothing to do with kidnapping the Governor.

The video the government relies on was preceded by two other videos. About 44 minutes earlier at 12:07 am Brandon Caserta live streamed to Facebook a traffic stop with a Canton Police Officer. This video was produced by the government as posted on Facebook at:

<https://www.facebook.com//brandon.caserta.144/videos/354273339027366/>

At 12:34 a.m. on 10/7/20 Brandon Caserta posted another video, again posted to Facebook at:

<https://www.facebook.com//brandon.caserta.144/videos/354291265692240/>

In this video Brandon Caserta states why he was stopped and is complaining about the police:

Yeah so guess what guys. I got robbed again by the state. Another fucking cop pulled me over on my way home from work, on my way home from work and fucking robbed me again dude. And my shit was clean bro. You know when you're driving on a one lane road, ok and someone's in front of you and they're turning left up on a street, like a blinking yellow light. So they build a median that goes over to the right, on a one lane road, so that you can go around them. You know at the intersection. You know what I'm sayin. There's a median that goes right. Ah, the guy saw me at Joy and Haggerty. He was going the opposite way I was. I passed him. He whipped around and started following me. And then when I went over and went around the guy that was turning left that's what he said he pulled me over for. Bro, I'm tellin you what. Let this shit go down bro. Let's this shit go down. I'm fuckin ready dude. I'm so fuckin ready man. These motherfuckers need to go one hundred percent.

Law & Argument

Defendant moves in limine for the exclusion of this October 7, 2020 video message as it is both irrelevant, pursuant to Fed. R. Evid. 401, and unfairly prejudicial, pursuant to Fed. R. Evid. 403.

First neither the government's video, nor the three videos as a whole, are an overt act(s) in furtherance of a conspiracy to kidnap the Governor of Michigan. It is, they are, statements expressing Brandon Caserta's frustration over civil infractions he had recently received on 9/19/20 for no proof of insurance (Exhibit 1) and again on 10/7/20 for failure to signal and/or observe (Exhibit 2), it has nothing to do with kidnapping the Governor. Brandon Caserta talks about "these gang fucking criminal ass government thugs that rob people every day" and "I'm sick of being robbed and enslaved by the state" "if this whole thing starts to happen" i.e. civil unrest, then at some point in the future, "if we're doing a recon or something" then don't give them a chance. This short 70 second video that was posted on Facebook says nothing about kidnapping the governor, nothing about any plot

to kidnap the governor, because it has nothing whatsoever to do with any conspiracy or plot to kidnap the governor. Brandon Caserta is mad, not at the governor, but at the police for giving him tickets and taking his money.

Brandon Caserta was expressing frustration related to a recent personal interaction he had with law enforcement, encounters that were completely peaceful. Looking at the videos in context, the reason for the videos becomes crystal clear. In the video just 17 minutes prior to the video relied upon by the government, Brandon Caserta states he was robbed again by the state and explains this is about a traffic ticket that he did not deserve. Never a mention or reference of the governor or kidnapping.

Pursuant to the Federal Rules of Evidence, evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

USCS Fed Rules Evid R 401. “Under the Federal Rules of Evidence, an item of evidence is admissible only if it is relevant, i.e., only if it tends to make a consequential fact more or less probable than it would be without the evidence.” *United States v. Smith-Kilpatrick*, 942 F.3d 734, 741 (6th Cir. 2019). The Federal Rules further provide that relevant evidence may nonetheless be excluded under certain circumstances:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

USCS Fed Rules Evid R 403. All witness presented must be more probative than prejudicial. *See United States v. Bailey*, 973 F.3d 548, 563 (6th Cir. 2020).

Here the video statements are not relevant. They are not about a plot to kidnap the governor. The videos are not probative of anything material to the case at bar. The

videos would take this case into Brandon Caserta's peaceful interactions with police involving traffic citations and will confuse the issues for the jury. Finally, Brandon Caserta in these videos is upset and says some negative things regarding police officers that will undoubtably offend many jurors outweighing any slight probative value.

Moreover, these videos are not overt acts. Overt acts are defined in *Sandroff v.*

United States:

An overt act which completes the crime of conspiracy to violate federal law is something apart from the conspiracy itself and is an act to effect the object of the conspiracy, and need not necessarily be a criminal act, nor a crime that is the object of the conspiracy, but must accompany or follow the agreement and must be done in furtherance of the object of the agreement. The overt act must be one that is done following the complete agreement or conspiracy. It is an outward act done in pursuance and in manifestation of an intent or design and looking toward accomplishment of the crime.

Sandroff v. United States, 174 F.2d 1014, 1018 (6th Cir. 1949).

The statements are not an outward act of anything. The videos are expressions of frustration regarding a traffic ticket. There is no "act" that was done. These statements are not outward acts done in pursuance and in manifestation of an intent or design and looking toward accomplishment of kidnapping. Since this video is not an overt act and is not relevant it must be excluded from this trial.

Wherefore Defendant, Brandon Caserta, asks this Court to exclude the videos outlined in the Superseding Indictment in Paragraph 18 that state Brandon Caserta is instructing his "co-conspirators in an encrypted video message that if they encountered police during a reconnaissance, they should give the officers one opportunity to leave, and kill them if they did not comply."

Respectfully Submitted,
HILLS LAW OFFICE, P.C.

Dated: July 12, 2021

/s/*Michael D. Hills*
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